

CHAPTER NO. 870

HOUSE BILL NO. 3287

**By Representatives Fitzhugh, Coleman, Towns, Marrero, Cooper, Yokley,
Shaw, Coleman, Campfield, Roach, McKee, Miller**

Substituted for: Senate Bill No. 2968

By Senator McNally

AN ACT to amend Tennessee Code Annotated, Sections 3-9-203, 8-25-103(a), 8-25-105, 8-25-108, 8-25-303(a), 8-34-101(46)(B), 8-34-302(a)(15), 8-34-302(c), 8-34-604(d), 8-34-625(d), 8-35-111(b)(3)(B), 8-35-203(a)(2), 8-35-218, 8-35-403, 8-36-109(a), 8-36-125(c), 8-36-205(a)(3)(C), 8-36-501(c)(3), 8-37-203, 8-37-504, and 8-37-604; and Title 8, Chapter 25, Part 3; and Title 8, Chapter 36, Part 8, relative to pensions and compensation programs for public officers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-25-103(a), is amended by deleting the words "tax-deferred compensation plan" and by substituting instead the words "deferred compensation plan".

SECTION 2. Tennessee Code Annotated, Section 8-25-105, is amended by deleting the words "tax-deferred compensation plan" and by substituting instead the words "deferred compensation plan".

SECTION 3. Tennessee Code Annotated, Section 8-25-108, is amended by deleting the period at the end thereof and by substituting instead the punctuation and words ", unless such deferred sum is designated by the employee as Roth 401(k) contributions under § 8-25-305."

SECTION 4. Tennessee Code Annotated, Title 8, Chapter 25, Part 3, is amended by adding the following new subsection:

8-25-305. (a) The state treasurer, with the approval of the commissioner of finance and administration, may adopt a new feature to the plan that would permit state employees, including employees of institutions of higher education, to designate some or all of the employees' contributions as Roth 401(k) contributions under Internal Revenue Code § 402A at the time the contributions are made.

(b) Any such Roth 401(k) contribution feature adopted pursuant to this section shall conform to all applicable laws, rules and regulations of the internal revenue service.

(c) Any political subdivision or instrumentality of the state that makes available to its employees a profit sharing and/or salary reduction

plan approved by the internal revenue service under § 401(k) of the Internal Revenue Code may, by resolution or ordinance of its governing body, adopt the Roth 401(k) contribution feature to its plan as described in this section.

SECTION 5. Tennessee Code Annotated, Section 8-25-303(a), is amended by deleting the same in its entirety and by substituting instead the following:

(a) Subject to subsection (c) of this section, the state shall provide for employer matching of contributions to the plan on behalf of participating state employees who are eligible to participate in the Tennessee Consolidated Retirement System or the optional retirement program established pursuant to chapter 35, part 4 of this title. Notwithstanding § 8-35-111, beginning on July 1, 2005, any such employer match shall equal one hundred percent (100%) of the amount contributed by each such state employee to the plan per month up to a maximum of twenty dollars (\$20) per month or, alternatively, up to such higher maximum as may be specifically prescribed in the annual appropriations act.

SECTION 6. Tennessee Code Annotated, Section 3-9-203, is amended by deleting the same in its entirety and by substituting instead the following:

3-9-203. Upon the request of the council on pensions and insurance, the chief executive officer or the plan administrator shall file a report on the actuarial and financial status of the retirement plan in effect for employees of the local government unit. The report shall be on such forms as may be prescribed by the secretary of the council and shall cover the most recently ended plan year ending on or before June 30 of the year of the request. The report shall be filed with the secretary of the council within ninety (90) calendar days from the date of the request, unless the secretary extends such time in writing.

SECTION 7. Tennessee Code Annotated, Section 8-34-101(46)(B), is amended by deleting the words "within the public school system that does not require a teacher's certificate shall be allowed to" and by substituting instead the words "within the Tennessee public school system that does not require a teacher's certificate shall".

SECTION 8. Tennessee Code Annotated, Section 8-34-302(a)(15), is amended by adding the following new sentence immediately after the first sentence thereof:

Beginning July 1, 2007, the term of the retired teacher trustee shall be for three (3) years.

SECTION 9. Tennessee Code Annotated, Section 8-34-302(c), is amended by deleting the same in its entirety.

SECTION 10. Tennessee Code Annotated, Section 8-34-604(d), is amended by deleting from the last sentence thereof the figures "8-36-806(d)" and by substituting instead the figures "8-36-802(d)".

SECTION 11. Tennessee Code Annotated, Section 8-34-625(d), is amended by deleting the same in its entirety and by substituting instead the following:

(d) Participating political subdivisions may adopt the provisions of this section provided that the chief governing body of the political subdivision passes a resolution authorizing the provisions of this subsection (d) for such employees and accepting the liability therefor.

SECTION 12. Tennessee Code Annotated, Section 8-35-111(b)(3)(B), is amended by deleting the same in its entirety.

SECTION 13. Tennessee Code Annotated, Section 8-35-203(a)(2), is amended by deleting the word "and" at the end of subdivision (a)(2)(B) thereof, and by adding the punctuation and word "; and" at the end of subdivision (a)(2)(C) thereof.

SECTION 14. Tennessee Code Annotated, Section 8-35-203(a)(2), is further amended by adding the following new subdivision at the end thereof:

(D)(i) If the employer maintained a pre-existing pension plan on behalf of the employee or teacher during any period of the previous service authorized by the employer under this subdivision (a)(2), then the employee or teacher shall have six (6) months from the employer's participation date in the retirement system to elect to establish the previous service rendered while a participant in the pre-existing plan, and one (1) year from the employer's participation date in the retirement system to transfer to the retirement system all sums maintained on behalf of the employee or teacher under the pre-existing plan. This requirement shall only apply if the transferred sums are the only payment required by the member to establish that service.

(ii) Any such employee or teacher who fails to make the above election and transfer within the time periods set forth in this subdivision (a)(2)(D) shall not later be eligible to establish the previous service rendered while a participant in the pre-existing plan.

(iii) Notwithstanding any other law to the contrary, any member who establishes prior service credit in the retirement system pursuant to this subdivision (a)(2)(D) may at a later date establish any additional periods of the previous service authorized by the employer under this subdivision (a)(2) provided that such member establishes all such additional periods of service before such service is creditable.

(iv) This subdivision (D) shall only apply to employees of employers that are admitted pursuant to this part on or after the effective date of this act.

SECTION 15. Tennessee Code Annotated, Section 8-35-218, is amended by deleting the words and figure "June 30 of the calendar year" wherever the same may appear and by substituting instead the word and figure "July 1".

SECTION 16. Tennessee Code Annotated, Section 8-35-403, is amended by adding the following new subsection at the end thereof:

(i) Notwithstanding § 8-35-411 or any other law to the contrary, any employee who transfers membership from the optional retirement program to the Tennessee consolidated retirement system pursuant to this section may elect, upon retiring or otherwise terminating employment, to receive a cash withdrawal of all or any portion of such employee's accumulated account or accounts if permitted by the relevant optional retirement company, and if the employee applies for and begins receiving a lifetime distribution of the remaining portion, if any, of such employee's accumulated account or accounts.

SECTION 17. Tennessee Code Annotated, Section 8-36-109(a), is amended by adding the following new subdivision at the end thereof:

(3)(A) Notwithstanding any other provision of the law to the contrary, if the member's spouse is the designated beneficiary on the date of the member's death, and if that spouse should thereafter die leaving a surviving child or children of the member under nineteen (19) years of age, then the annuity the spouse was receiving under this subsection (a) shall be divided equally among the member's surviving children. Each child shall receive such child's share until reaching nineteen (19) years of age or marries or dies, whichever occurs first, at which time this annuity shall be redistributed equally among the remaining children; or in the event the child or children is or are full-time students in an educational institution, this annuity shall be paid until the child or children reach twenty-two (22) years of age or marry or die, whichever occurs first, at which time the annuity to which that child was entitled shall terminate.

(B) If the member's spouse is designated as the sole beneficiary on the date of the member's death and if that spouse predeceased the member or died in a common accident or occurrence with the member, then the surviving child or children of the member in the age groups specified above shall be entitled to the same annuity as set forth in subdivision (a)(3)(A) above.

(C) Any annuity payable to a full-time student under this subdivision shall not cease when such student reaches twenty-two (22) years of age, but shall continue through the end of the quarter or semester in which the student reaches twenty-two (22) years of age, if the student has not completed undergraduate degree requirements. If the student attends an educational institution other than one on a quarter or semester basis, the annuity shall continue until the student completes the

course or for two (2) months after the month the student reaches twenty-two (22) years of age, whichever comes first.

(D) As used in this subdivision, "full-time students" and "educational institution" shall have the same meanings as that given in the federal Social Security Act, and its related laws, regulations, and rulings.

(E) For the purpose of accomplishing the intent of these provisions only, the benefits provided herein for the child or children shall be paid only to the legal guardian of the children, regardless of the age or majority status of the child or children, and the courts of competent jurisdiction are hereby granted the authority to appoint and continue in effect such guardianships until the benefits payable are terminated.

SECTION 18. Tennessee Code Annotated, Section 8-36-125(c), is amended by deleting the last sentence thereof in its entirety and by substituting instead the following:

That amount shall be paid in equal proportions among the surviving non-disclaiming beneficiaries, if any, otherwise the amount shall be paid in accordance with § 8-36-120.

SECTION 19. Tennessee Code Annotated, Section 8-36-205(a)(3)(C), is amended by inserting immediately after the words "Tennessee wildlife resources agency" the punctuation and words ", the director of the Tennessee alcoholic beverage commission".

SECTION 20. Tennessee Code Annotated, Section 8-36-501(c)(3), is amended by deleting the last sentence thereof in its entirety.

SECTION 21. Tennessee Code Annotated, Section 8-37-203, is amended by deleting the same in its entirety.

SECTION 22. Tennessee Code Annotated, Section 8-37-504, is amended by deleting the same in its entirety and by substituting instead the following:

(a) When any employer shall fail to forward payroll data or pay the full amount of contributions required by chapters 34-37 of this title, there shall be imposed a specific civil penalty to be added to the contributions in the amount of five and one-half percent (5.5%), if the failure is not more than thirty (30) days, with an additional five percent (5%) for each additional thirty (30) days, or fraction thereof, during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate. Effective for the payroll period ending July 1, 2006 and thereafter, the penalty imposed under this subsection shall in no case be less than twenty-five dollars (\$25.00), if the failure is not more than thirty (30) days, with an additional twenty-five dollars (\$25.00) for each additional thirty (30) days, or fraction thereof, during which the failure

continues, not to exceed one hundred fifty dollars (\$150.00) in the aggregate.

(b) Any penalties assessed under this section shall be credited to the state accumulation fund pursuant to § 8-37-301.

SECTION 23. Tennessee Code Annotated, Section 8-37-604, is amended by deleting the same in its entirety.

SECTION 24. Tennessee Code Annotated, Section 8-36-808(a), is amended by deleting the words and figures ", and who is in office on March 10, 1997,".

SECTION 25. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 26. Section 5 of this act shall take effect on July 1, 2006, the public welfare requiring it. The remaining provisions of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 23, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 5th day of June 2006


PHIL BREDESEN, GOVERNOR